

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 12-203
Competition in the Market for the)	
Delivery of Video Programming)	

**COMMENTS OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

The National Association of Telecommunications Officers and Advisors (“NATOA”)¹ submits these comments in response to the above-captioned Notice of Inquiry (“NOI”), released July 20, 2012, seeking “data, information, and comment on the state of competition in the delivery of video programming.”

As local governments have been saying for years, we welcome competition in our communities. Unfortunately, even with industry backed state legislative initiatives that were sold to policy-makers and consumers as a way to increase video service competition, not all jurisdictions can boast of having two or more competitive cable providers. And with Verizon’s

¹ NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.

public statements that expansion of its FiOS service is over,² AT&T's acknowledgement that its U-verse build-out is over,³ and uncertainties over any further Google fiber projects,⁴ this situation is not likely to change any time soon.⁵

However, we applaud the Commission for undertaking this proceeding to examine how the competition we do have today affects PEG programming, service pricing and quality, and the delivery of video services to rural America.

PEG Programming

PEG programming is a "critical and irreplaceable resource" for local communities across the nation.⁶ PEG programming addresses such topics as health,⁷ education,⁸ the arts,⁹ economic

² See K. Bode, *Verizon Again Confirms FiOS Expansion is Over*, available at: <http://www.dslreports.com/shownews/Verizon-Again-Confirms-FiOS-Expansion-is-Over-118949>

³ See D. Burstein, *AT&T's Stankey: U-verse Build Virtually Over*, available at: <http://www.dslreports.com/shownews/ATTs-Stankey-Uverse-Build-Virtually-Over-114279>

⁴ See S. Patterson, *Google Fiber "Likely" to Expand, Say Analyst [UPDATE]*, available at: <http://www.webpronews.com/google-to-expand-its-1000-mbps-fiber-to-other-cities-2012-09>

⁵ NATOA fully expects that some industry commenters in this proceeding will once again attempt to blame this lack of competition on local government regulation, an expectation premised, in part, by questions raised in the NOI concerning franchising, over-the-air reception devices, and public interest programming. However, as we have shown before, decisions to provide competitive cable services have little to do regulatory oversight of the public rights of way. See Comments of the National League of Cities, et al., WC Docket No. 11-59 (July 18, 2012).

⁶ See Comments of Somerville Community Access Television, Somerville, MA, MB Docket No. 12-203, at 2 (September 6, 2012).

⁷ See Comments of the city of Battle Creek, Michigan, MB Docket No. 12-203, at 3 (August 30, 2012).

⁸ See Comments of the Trumbull Community Television Committee, MB Docket No. 12-203 (August 28, 2012).

development,¹⁰ religion,¹¹ local politics,¹² sports,¹³ and more. Indeed, the availability and desire for such programming has been cited by some video subscribers as a factor when choosing their service provider.¹⁴ Unfortunately, many commenters state that their PEG operations have taken a financial hit in the current economy and many more channels have simply gone dark as a result of various state franchise legislative initiatives.¹⁵

Unfortunately, the state of PEG programming today is pretty much the same, if not worse, than that portrayed in the Commission's 14th report on the status of competition for the delivery of video programming.¹⁶ Of particular concern is the carriage – or lack thereof – of PEG programming on AT&T's U-verse system. For example, in Battle Creek, Michigan, AT&T wants to charge the "PEG facility \$500 per channel, per month to deliver the channels on their

⁹ See Comments of the Chicago Access Corporation, MB Docket No. 12-203, at 1 (August 31, 2012).

¹⁰ *Id.*

¹¹ Comments of the city of Battle Creek, Michigan, MB Docket No. 12-203, at 3 (August 30, 2012).

¹² *Id.*

¹³ See Comments of the city of Connorsville, Indiana, MB Docket No. 12-203, at 1 (August 24, 2012).

¹⁴ *Id.* Also see Comments of the Trumbull Community Television Committee, MB Docket No. 12-203, at 2 (August 28, 2012).

¹⁵ See Comments of American Community Television, Inc., MB Docket No. 12-203 (September 10, 2012).

¹⁶ *Annual Assessment for the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Fourteenth Report, FCC 12-81, at ¶ 64 (rel. July 20, 2012) ("*14th Report*").

system.”¹⁷ In contrast, Comcast, the community’s other video provider, “has never charged for delivery of these channels.”¹⁸ In Chicago, there are four video service providers and all but one – AT&T – provide five PEG channels “at the same channel locations throughout the city on the lowest cost basic tier of service.”¹⁹

Other complaints of AT&T’s U-verse product include poor video quality,²⁰ channel inaccessibility,²¹ and the inability to time-shift using a DVR or VCR.²²

In 2009, as noted in the Commission’s 14th report, “the Commission received two petitions seeking a declaratory ruling clarifying the statutory rules and responsibilities of MVPDs with respect to the carriage of PEG channels. These petitions argue that AT&T’s delivery of PEG programming on its U-verse system violates the Act. In particular, the petitioners’ claim that AT&T’s placement of PEG programming on a singular channel in its U-verse system is a violation of the Act because it results in inferior PEG channel accessibility, functionality, and signal quality in comparison to other basic and non-basic channels on AT&T’s U-verse

¹⁷ See Comments of the city of Battle Creek, Michigan, MB Docket No. 12-203, at 2 (August 30, 2012).

¹⁸ *Id.*

¹⁹ See Comments of the Chicago Access Corporation, MB Docket No. 12-203, at 2 (August 31, 2012).

²⁰ See Comments of Missouri City, Texas, MB Docket No. 12-203, at 2 (August 24, 2012).

²¹ See Comments of the Chicago Access Corporation, MB Docket No. 12-203, at 2 (August 31, 2012); Comments of the city of Austin, Texas, MB Docket No. 12-203, at 2 (September 7, 2012).

²² See Comments of Elk Grove Village, Illinois, MB Docket No. 12-203, at 2 (August 21, 2012).

system.”²³ As demonstrated by some of the comments filed in this proceeding, these same problems continue today. It is time for the Commission to take action on these petitions.

Furthermore, because of the local perspective that PEG programming provides to a community, and its recognized importance to viewers, we urge the Commission to take whatever steps it can to protect and encourage PEG programming and its funding.

Definition of “Rural”

Utilizing one definition based on population per square mile will not include all areas that have rural characteristics. Urban, rural, and suburban areas exist in a continuum and the lines between each are usually not distinct. The term “rural area” is very place specific and subjective. Rural areas exist within counties of various population densities, and these rural places interact with each other and urban centers in their region. As the Commission considers this topic, the most important fact to remember is that rural residents and places do not fit nicely into a box. We encourage the Commission to focus on providing enhanced flexibility so that programs serve the uniquely rural nature of each state and region. A more satisfactory definition of rural should focus on making a flexible definition that allows all rural and underserved communities to be included. Therefore, other factors that can allow an area to be designated as rural if it doesn’t meet the first test, including census tracts and zip codes, should be considered. There should also be a waiver process for communities that have rural characteristics, but do not meet the current designation criteria.

²³ *Annual Assessment for the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Fourteenth Report, FCC 12-81, at ¶ 66 (rel. July 20, 2012) (“14th Report”).

Regulatory, Technological, and Market Conditions Affecting Competition

A major issue here is the increasing role that over-the-top, online video distributors are playing in providing consumers with video programming. This regulatory picture is further clouded by attempting to accommodate new technologies and video services within the current copyright regulatory framework.²⁴ But resolving the regulatory issues involved will require a very careful balancing act to ensure that traditional video providers are not put at a competitive disadvantage while ensuring continued competition and innovation by new market entrants. As the Motion Picture Association of America stated, “Even small changes to video programming regulations can have a far-reaching impact on the complex ecosystem that underpins the video content industry, especially in the Internet age.”²⁵

We encourage the Commission to continue its efforts to obtain information on this particular matter. But as we said before, we believe a proper resolution on how to treat over the top distributors rests with Congress.

Respectfully submitted,



Stephen Traylor
Executive Director/General Counsel
NATOA
3213 Duke Street, #695
Alexandria, VA 22314
703-519-8035
September 10, 2012

²⁴ See Reply Comments of the National Association of Telecommunications Officers and Advisors, MB Docket No. 12-83 (June 13, 2012).

²⁵ See Comments of the Motion Picture Association of America, MB Docket No. 12-83, at 1 (May 14, 2012).